

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: JAN 22 2015

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a Software Development and Consulting firm. In order to continue to employ the beneficiary in what it designates as a Database Administrator position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it has standing to file the instant visa petition as the beneficiary's prospective United States employer as that term is defined at 8 C.F.R. § 214.2(h)(4)(ii).

The record of proceeding before us contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; (5) Form I-290B and supporting materials, (6) the AAO's RFE; and (7) the petitioner's response to the AAO's RFE. We reviewed the record in its entirety before issuing its decision.

II. THE LAW

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant in pertinent part as an alien:

subject to section 212(j)(2), who is coming temporarily to the United States to perform services . . . in a specialty occupation described in section 214(i)(1) . . . , who meets the requirements for the occupation specified in section 214(i)(2) . . . , and with respect to whom the Secretary of Labor determines and certifies to the [Secretary of Homeland Security] that the intending employer has filed with the Secretary [of Labor] an application under section 212(n)(1)

The term "United States employer" is defined in the Code of Federal Regulations at 8 C.F.R. § 214.2(h)(4)(ii) as follows:

United States employer means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) *Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and*

- (3) Has an Internal Revenue Service Tax identification number.

(Emphasis added); *see also* 56 Fed. Reg. 61111, 61121 (Dec. 2, 1991).

The record is not persuasive in establishing that the petitioner will have an employer-employee relationship with the beneficiary.

III. ANALYSIS

Although "United States employer" is defined in the regulations at 8 C.F.R. § 214.2(h)(4)(ii), it is noted that the terms "employee" and "employer-employee relationship" are not defined for purposes of the H-1B visa classification. Section 101(a)(15)(H)(i)(b) of the Act indicates that an alien coming to the United States to perform services in a specialty occupation will have an "intending employer" who will file a Labor Condition Application with the Secretary of Labor pursuant to section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1) (2012). The intending employer is described as offering full-time or part-time "employment" to the H-1B "employee." Subsections 212(n)(1)(A)(i) and 212(n)(2)(C)(vii) of the Act, 8 U.S.C. § 1182(n)(1)(A)(i), (2)(C)(vii) (2012). Further, the regulations indicate that "United States employers" must file a Petition for a Nonimmigrant Worker (Form I-129) in order to classify aliens as H-1B temporary "employees." 8 C.F.R. § 214.2(h)(1), (2)(i)(A). Finally, the definition of "United States employer" indicates in its second prong that the petitioner must have an "employer-employee relationship" with the "employees under this part," i.e., the H-1B beneficiary, and that this relationship be evidenced by the employer's ability to "hire, pay, fire, supervise, or otherwise control the work of any such employee." 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer").

Neither the former Immigration and Naturalization Service (INS) nor U.S. Citizenship and Immigration Services (USCIS) defined the terms "employee" or "employer-employee relationship" by regulation for purposes of the H-1B visa classification, even though the regulation describes H-1B beneficiaries as being "employees" who must have an "employer-employee relationship" with a "United States employer." *Id.* Therefore, for purposes of the H-1B visa classification, these terms are undefined.

The United States Supreme Court has determined that where federal law fails to clearly define the term "employee," courts should conclude that the term was "intended to describe the conventional master-servant relationship as understood by common-law agency doctrine." *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318, 322-323 (1992) (hereinafter "*Darden*") (quoting *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989)). The Supreme Court stated:

"In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired

party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party."

Darden, 503 U.S. at 323-324 (quoting *Community for Creative Non-Violence v. Reid*, 490 U.S. at 751-752); see also *Clackamas Gastroenterology Associates, P.C. v. Wells*, 538 U.S. 440, 445 (2003) (hereinafter "*Clackamas*"). As the common-law test contains "no shorthand formula or magic phrase that can be applied to find the answer, . . . all of the incidents of the relationship must be assessed and weighed with no one factor being decisive." *Darden*, 503 U.S. at 324 (quoting *NLRB v. United Ins. Co. of America*, 390 U.S. 254, 258 (1968)).

In this matter, the Act does not exhibit a legislative intent to extend the definition of "employer" in section 101(a)(15)(H)(i)(b) of the Act, "employment" in section 212(n)(1)(A)(i) of the Act, or "employee" in section 212(n)(2)(C)(vii) of the Act beyond the traditional common law definitions. See generally 136 Cong. Rec. S17106 (daily ed. Oct. 26, 1990); 136 Cong. Rec. H12358 (daily ed. Oct. 27, 1990). On the contrary, in the context of the H-1B visa classification, the regulations define the term "United States employer" to be even more restrictive than the common law agency definition.¹

Specifically, the regulatory definition of "United States employer" requires H-1B employers to have a

¹ While the *Darden* court considered only the definition of "employee" under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1002(6), and did not address the definition of "employer," courts have generally refused to extend the common law agency definition to ERISA's use of employer because "the definition of 'employer' in ERISA, unlike the definition of 'employee,' clearly indicates legislative intent to extend the definition beyond the traditional common law definition." See, e.g., *Bowers v. Andrew Weir Shipping, Ltd.*, 810 F. Supp. 522 (S.D.N.Y. 1992), *aff'd*, 27 F.3d 800 (2nd Cir.), *cert. denied*, 513 U.S. 1000 (1994).

However, in this matter, the Act does not exhibit a legislative intent to extend the definition of "employer" in section 101(a)(15)(H)(i)(b) of the Act, "employment" in section 212(n)(1)(A)(i) of the Act, or "employee" in section 212(n)(2)(C)(vii) of the Act beyond the traditional common law definitions. Instead, in the context of the H-1B visa classification, the term "United States employer" was defined in the regulations to be even more restrictive than the common law agency definition. A federal agency's interpretation of a statute whose administration is entrusted to it is to be accepted unless Congress has spoken directly on the issue. See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844-845 (1984).

Finally, it is also noted that if the statute and the regulations were somehow read as extending the definition of employee in the H-1B context beyond the traditional common law definition, this interpretation would likely thwart congressional design and lead to an absurd result when considering the \$750 or \$1,500 fee imposed on H-1B employers under section 214(c)(9) of the Act, 8 U.S.C. § 1184(c)(9). As 20 C.F.R. § 655.731(c)(10)(ii) mandates that no part of the fee imposed under section 214(c)(9) of the Act shall be paid, "directly or indirectly, voluntarily or involuntarily," by the beneficiary, it would not appear possible to comply with this provision in a situation in which the beneficiary is his or her own employer, especially where the requisite "control" over the beneficiary has not been established by the petitioner.

tax identification number, to engage a person to work within the United States, and to have an "employer-employee relationship" with the H-1B "employee." 8 C.F.R. § 214.2(h)(4)(ii). Accordingly, the term "United States employer" not only requires H-1B employers and employees to have an "employer-employee relationship" as understood by common-law agency doctrine, it imposes additional requirements of having a tax identification number and to employ persons in the United States. The lack of an express expansion of the definition regarding the terms "employee" or "employer-employee relationship" combined with the agency's otherwise generally circular definition of United States employer in 8 C.F.R. § 214.2(h)(4)(ii) indicates that the regulations do not intend to extend the definition beyond "the traditional common law definition" or, more importantly, that construing these terms in this manner would thwart congressional design or lead to absurd results. *Cf. Darden*, 503 U.S. at 318-319.²

Accordingly, in the absence of an express congressional intent to impose broader definitions, both the "conventional master-servant relationship as understood by common-law agency doctrine" and the *Darden* construction test apply to the terms "employee" and "employer-employee relationship" as used in section 101(a)(15)(H)(i)(b) of the Act, section 212(n) of the Act, and 8 C.F.R. § 214.2(h).³

Therefore, in considering whether or not one will be an "employee" in an "employer-employee relationship" with a "United States employer" for purposes of H-1B nonimmigrant petitions, USCIS must focus on the common-law touchstone of "control." *Clackamas*, 538 U.S. at 450; *see also* 8 C.F.R. § 214.2(h)(4)(ii) (defining a "United States employer" as one who "has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise *control* the work of any such employee" (emphasis added)).

The factors indicating that a worker is or will be an "employee" of an "employer" are clearly delineated in both the *Darden* and *Clackamas* decisions. *Darden*, 503 U.S. at 323-324; *Clackamas*, 538 U.S. at 445; *see also* *Restatement (Second) of Agency* § 220(2) (1958). Such indicia of control include when, where, and how a worker performs the job; the continuity of the worker's relationship with the employer; the tax treatment of the worker; the provision of employee benefits; and whether the work performed by the worker is part of the employer's regular business. *See Clackamas*, 538 U.S. at 445; *see also* *New Compliance Manual*, Equal Employment Opportunity Commission, § 2-III(A)(1) (adopting a materially identical test and indicating that said test was based on the *Darden* decision); *see*

² To the extent the regulations are ambiguous with regard to the terms "employee" or "employer-employee relationship," the agency's interpretation of these terms should be found to be controlling unless "plainly erroneous or inconsistent with the regulation." *Auer v. Robbins*, 519 U.S. 452, 461 (1997) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 359, 109 S.Ct. 1835, 1850, 104 L.Ed.2d 351 (1989) (quoting *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414, 65 S.Ct. 1215, 1217, 89 L.Ed. 1700 (1945))).

³ That said, there are instances in the Act where Congress may have intended a broader application of the term "employer" than what is encompassed in the conventional master-servant relationship. *See, e.g.*, section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (referring to "unaffiliated employers" supervising and controlling L-1B intracompany transferees having specialized knowledge); section 274A of the Act, 8 U.S.C. § 1324a (referring to the employment of unauthorized aliens).

also *Defensor v. Meissner*, 201 F.3d 384, 388 (5th Cir. 2000) (determining that hospitals, as the recipients of beneficiaries' services, are the "true employers" of H-1B nurses under 8 C.F.R. § 214.2(h), even though a medical contract service agency is the actual petitioner, because the hospitals ultimately hire, pay, fire, supervise, or otherwise control the work of the beneficiaries).

It is important to note, however, that the factors listed in *Darden* and *Clackamas* are not exhaustive and must be evaluated on a case-by-case basis. Other aspects of the relationship between the parties relevant to control may affect the determination of whether an employer-employee relationship exists. Furthermore, not all or even a majority of the listed criteria need be met; however, the fact finder must weigh and compare a combination of the factors in analyzing the facts of each individual case. The determination must be based on all of the circumstances in the relationship between the parties, regardless of whether the parties refer to it as an employee or as an independent contractor relationship. See *Clackamas*, 538 U.S. at 448-449; *New Compliance Manual* at § 2-III(A)(1).

Furthermore, when examining the factors relevant to determining control, USCIS must assess and weigh each actual factor itself as it exists or will exist and not the claimed employer's right to influence or change that factor, unless specifically provided for by the common-law test. See *Darden*, 503 U.S. at 323-324. For example, while the assignment of additional projects is dependent on who has the *right to* assign them, it is the *actual* source of the instrumentalities and tools that must be examined, and not who has the *right to* provide the tools required to complete an assigned project. See *id.* at 323.

Lastly, the "mere existence of a document styled 'employment agreement'" shall not lead inexorably to the conclusion that the worker is an employee. *Clackamas*, 538 U.S. at 450. "Rather, . . . the answer to whether [an individual] is an employee depends on 'all of the incidents of the relationship . . . with no one factor being decisive.'" *Id.* at 451 (quoting *Darden*, 503 U.S. at 324).

Applying the *Darden* and *Clackamas* tests to this matter, the petitioner has not established that it will be a "United States employer" having an "employer-employee relationship" with the beneficiary as an H-1B temporary "employee."

IV. EVIDENCE

On the Form I-129 at Part 5. Basic Information About the Proposed Employment and Employer, in answer to question 5, "Will the beneficiary work off-site?," the petitioner responded by marking the check box labeled, "Yes." In answer to question 4, "Is an itinerary included with the petition?," the petitioner responded by checking the box labeled "Yes." No itinerary was provided with the visa petition.

With the visa petition, counsel submitted (1) a Software Development Outsourcing Agreement for a project entitled, [REDACTED]; and (2) a letter, dated July 18, 2012, from [REDACTED] who identified herself as the petitioner's managing director.

The Software Development Outsourcing Agreement indicates that the petitioner has agreed to develop the [REDACTED] project for [REDACTED]. That agreement states that the petitioner will perform its work at its own premises. It further states that the beneficiary will work on that project as a "Data Architect/DB Administrator. It does not list any educational requirements for the position the beneficiary would fill or the work he would perform.

In her July 18, 2012 letter, [REDACTED] provided the following description of the duties of the proffered position:

Design and enhance a variety of sophisticated software implementation projects. Utilize industry expertise to perform a broad range of business data analysis, design, database administration and integration duties. Architect, design and maintain project level data models for conceptual, logical, star schema models and physical data models, XML schemas and other data engineering efforts. Maintain subject area and enterprise data models and schemas using [REDACTED] 40%

Under the direction of technical management, liaise with various client business groups and IT management to formulate and define system scope and objectives through research and fact finding to design database blue prints. Create and maintain SQL Scripts, stored procedures and functions for databases including Oracle, Teradata, DB2 and MS SQL Server. Perform database and SQL Tuning on the data storage and Data base Engine performance from time to time for optimal performance. 20%

Implement database physical design and provide support for implementation of information systems. Thorough analysis of Data processing requirements, collection of metadata and business processes re-engineering, design and implement the software which will best serve the client's needs, Gather and enhance database design requirements and performance, implement data integration between various databases to process client's data in the most timely and cost effective manner. Perform gap analysis, data mappings, data quality profiling and maintain data profiling and maintain metadata. 15%

Prepare detailed specifications of source and target databases, data mapping, data Quality rules and related metrics. Perform production support through database performance tuning, database backup, data recovery, maintain high data quality, data security, data governance and provide guidance and mentor junior DBA's and developers. Configure and setup Master Data Management (MDM) Repository, Source to target integration/ETL mappings and associated business rules. Create web services integration design specifications for accessing data in real-time, provide guidelines to data stewards in data governance best practices. 15%

Interact with client's management explaining each phase of the system implementation process, resolve issues/concerns, responding to questions, comments and criticisms, and modifying systems to address concerns raised by the client. Provide on-going database administration, back-up/recovery, business continuity support and change management support for development, testing and production databases. Perform design assessment reviews, revisions and revamp [] systems as required, not only to meet client concerns, but also to respond to unanticipated software engineering and technical anomalies. 10%

As to the educational requirements of the proffered position, [REDACTED] stated: "Based on our experience, only an individual with a Bachelor's Degree will be able to accomplish the demands that this position commands."

On February 20, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would have an employer-employee relationship with the beneficiary. The director outlined the specific evidence to be submitted.

In questioning whether an employer-employee relationship would exist between the petitioner and the beneficiary, the RFE noted the existence of the following records:

- A 2009 [REDACTED] report for [the petitioner] listing the beneficiary's name as the chief executive officer with 100% ownership of capital stock;
- An Amendment Certificate to the Articles of Organization showing [the petitioner] as the adapted [sic] name of [REDACTED] formed in Michigan [sic] on April 15, 1998 in the beneficiary's name;
- A 2011 [REDACTED] report for [REDACTED] showing the beneficiary's name as the branch manager;
- A 2006 lease agreement in the name of the beneficiary for [the petitioner] at [REDACTED] New Jersey;
- A 2007 U.S. Return of Partnership Income (IRS Form 1065) for [the petitioner] showing the name of the beneficiary's wife, [REDACTED] as Designation of Tax Matters Partner;

The RFE requested:

In order to demonstrate that a valid employer-employee relationship exists between [the petitioner] and the beneficiary, please submit additional evidence documenting whether or not the beneficiary has an ownership interest in the petitioning entity, and if so, the percentage of ownership interest

In response to the RFE, counsel submitted: (1) a copy of an "Employment Agreement," dated June 4, 2009; and (2) counsel's own letter, dated May 15, 2013.

The June 4, 2009 agreement was executed by the petitioner and the beneficiary, and provides the following description of the duties of the proffered position:

- Conduct interviews with customer and subject matter experts to understand information needs and design Enterprise data models.
- Develop and design conceptual, logical and physical data models.
- Research and development of business solutions as required by customers.
- Review source systems and business publications to accurately capture new data requirements and integrate them into the logical data model.
- Conduct data model reviews with developers, architects, business analysts and subject matter experts to collaborate and gain consensus.
- Keep the logical and physical models synchronized and understand how information translates between the two models.
- Evolve the logical data model over time and work with developers to assure it is leveraged across all projects.
- Be an advocate for the practice of modeling in technology and communicate the benefits to the customer organization
- Work closely with data services team to assure all required interfaces are built with a the [sic] long[-]term vision.
- Drive metadata documentation and make it available to those that dependent [sic] upon it.
- Write SQL queries to database for data manipulation and reporting.
- Performance tuning of the database engine to optimize query and functioning of the application with data.
- Participate in team and client meetings as requested.
- Work on multiple projects simultaneously with varying levels of complexity and deliverables.
- Researches, analyzes and resolves problems and issues with minimal supervision and escalate issues as appropriate.

We observe that duty description is consistent with the duty description contained in the petitioner's [redacted] July 18, 2012 letter.

Among its other terms, that agreement states: "[The beneficiary] agrees that his/her duties shall be rendered at [the petitioner's] business premises *or at such other places as the [petitioner] may require from time to time.*" [Emphasis supplied.]

In his May 15, 2013 letter, counsel stated:

[The beneficiary] does not have an ownership interest in the [petitioner]. [The petitioner] was initially founded in August, 1998 under the name [redacted] See Exhibit 10. The 2010 to 2012 U.S. Return on Partnership Income Tax filings show that [the beneficiary] did not hold any ownership interest in

[the petitioner]. See Schedule NJK-1, Exhibit 11. This evidence shows that [the beneficiary] does not have an ownership interest in the [petitioner]. It also shows that the information in the [redacted] report is incorrect as the evidence provided accurately reflects the current ownership of [the petitioner]. As a result, [the beneficiary] does not have an ownership interest in [the petitioner].

The director denied the visa petition on December 17, 2013, finding, as was noted above, that the petitioner had not demonstrated that it has standing to file the instant visa petition as the beneficiary's prospective U.S. employer.

In the appeal brief, counsel noted that none of the documentation provided pertains to the ownership of the petitioner during the period of employment requested in the instant visa petition, and that some relates to periods prior to the beneficiary's employment by the petitioner. Counsel specifically noted that the 2006 lease agreement and 2007 tax return predate the beneficiary's employment by the petitioner. Counsel also noted that [redacted] is publicly traded, for profit, company, and that "The veracity of the information provided in these reports is at best speculative."

V. DISCUSSION

Initially, we observe that the inference that may be drawn by the beneficiary having founded the petitioner, having acted as its CEO, its principal, its branch manager, even before being hired as an employee, is that the beneficiary may exert such influence over the petitioner that no true employer-employee relationship may exist.

On appeal, counsel did not assert that the evidence was mistaken, but only that it is questionable, and that it refers to a time prior to the petitioner hiring the beneficiary. That does not dispel the inference that the beneficiary's control over the petitioner is such that the petitioner would not have an employer-employee relationship with the beneficiary. We would conclude that the director was correct in finding that the petitioner had not demonstrated that, if the visa petition were approved, it would have an employer-employee relationship with the beneficiary.

However, an additional reason exists to find that the petitioner has not demonstrated that it would have an employer-employee relationship with the beneficiary. As was noted above, the petitioner stated, on the visa petition, that the beneficiary would work off-site, that is, away from the petitioner's premises. The "Employment Agreement" submitted also indicates that the beneficiary may work away from the petitioner's premises.

The scenario pursuant to which the petitioner would work at a location remote from the petitioner's premises is entirely unclear. The petitioner has provided insufficient information pursuant to the work that the beneficiary would, or might, perform at a remote location. Whether the petitioner would also relocate a supervisor to that remote location to assign the beneficiary's tasks and supervise his performance is unknown. Whether, on the other hand, an employee of some other company would assign the beneficiary's tasks and supervise his performance has not been revealed.

While social security contributions, worker's compensation contributions, unemployment insurance contributions, federal and state income tax withholdings, and other benefits are still relevant factors in determining who will control an alien beneficiary, other incidents of the relationship, e.g., who will oversee and direct the work of the beneficiary, who will provide the instrumentalities and tools, where will the work be located, and who has the right or ability to affect the projects to which the alien beneficiary is assigned, must also be assessed and weighed in order to make a determination as to who will be the beneficiary's employer. Without full disclosure of all of the relevant factors, we are unable to find that the requisite employer-employee relationship will exist between the petitioner and the beneficiary.

The evidence, therefore, is insufficient to establish that the petitioner qualifies as a United States employer, as defined by 8 C.F.R. § 214.2(h)(4)(ii). Claiming in its letters that the petitioner exercises complete control over the beneficiary is insufficient in the face of evidence to the contrary. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The evidence of record prior to adjudication did not establish that the petitioner would act as the beneficiary's employer in that it would control the work of the beneficiary.

Based on the tests outlined above, the petitioner has not established that it will be a "United States employer" having an "employer-employee relationship" with the beneficiary as an H-1B temporary "employee." 8 C.F.R. § 214.2(h)(4)(ii). Therefore, the appeal will be dismissed and the petition will be denied.

VI. ADDITIONAL BASES

The record suggests additional issues that were not mentioned in the decision of denial.

A. ITINERARY

The petitioner has indicated on the visa petition and in the beneficiary's employment contract that he will or may work at locations other than the petitioner's premises. The regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) states, in pertinent part:

Service or training in more than one location. A petition that requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with USCIS as provided in the form instructions. The address that the petitioner specifies as its location on the Form I-129 shall be where the petitioner is located for purposes of this paragraph.

The itinerary language at 8 C.F.R. § 214.2(h)(2)(i)(B), with its use of the mandatory “must” and its inclusion in the subsection “Filing of petitions,” establishes that the itinerary as there defined is a material and necessary document for an H-1B petition involving employment at multiple locations, and that such a petition may not be approved for any employment period for which there is not submitted at least the employment dates and locations. Here, there are indications in the record that the beneficiary would work at multiple locations at some point during the requested period of employment. Notwithstanding that the petitioner stated, on the visa petition, that it was providing the required itinerary, no such itinerary is present in the record. The petition must be denied on this additional basis.

B. LOCATION

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

While the U.S. Department of Labor (DOL) is the agency that certifies LCAs before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification. . . .*

[Italics added]

In the instant case, the record indicates that the beneficiary would work at a location, or at locations, other than the petitioner's premises. However, those locations are not identified in the record. Therefore, the LCA submitted, which is certified for employment at the petitioner's premises in New Jersey, has not been shown to be valid for employment in all of the locations where the beneficiary would work. It has not been shown, therefore, to correspond to the visa petition. The visa petition must be denied on this additional basis.

C. SPECIALTY OCCUPATION

The instant visa category is for specialty occupation positions, that is, positions that require a minimum of a bachelor's degree in a specific specialty or its equivalent. However, the petitioner has not indicated that the instant visa petition requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Specifically, in her July 18, 2012 letter, [REDACTED] stated that the proffered position requires a bachelor's degree. She did not state that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. There is insufficient evidence that the petitioner has a specific degree requirement.

Further, the petitioner has indicated that the beneficiary will or may work at a location, or at locations, other than the petitioner's premises. Even if the duties that the beneficiary would have performed if he worked at the petitioner's offices serving in the [REDACTED] project had been shown to be specialty occupation duties, the duties he might perform at other locations, on other projects, at the premises of other companies, have not been identified and could not, therefore, be shown to be specialty occupation duties. The petitioner has not demonstrated that, if the visa petition were approved, the beneficiary would perform specialty occupation duties. The visa petition must be denied on this additional basis.

VII. CONCLUSION

The petitioner noted that USCIS approved other petitions that had been previously filed by the instant petitioner on behalf of the instant beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same evidence contained in the current record, the approval would constitute material and gross error on the part of the director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.